E COPY

FILED
MAR 15 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 733

SOUTHERN CROSS STEAMSHIP CO., INC.,
Petitioner

versus

GEORGE FIRIPIS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF FIRIPIS IN OPPOSITION

SIDNEY H. KELSEY
1408 Maritime Tower
Norfolk 10, Virginia
Proctor for Respondent

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	2
Counter Statement of Case	3
Argument	6
Conclusion	12
Appendix (Separator Page)	1

CITATIONS

Bartholomew v. Universe Tankships, Inc., 263 F 2d 437 (2nd Cir. 1959) cert. den. 359 U. S. 1000	7, 8, 10
Carroll v. United States, 133 F 2d 690 (2nd Cir. 1943)	8
Cerradin v. United Fruit Co., 60 F 2d 927 (2nd Cir. 1932) cert. den. 287 U. S. 642	7
Korthinos v. Niarchos, 175 F 2d 730 (4th Cir. 1949) cert. den. 338 U. S. 894	11
Lauritzen v. Larsen, 345 U. S. 571	6-10
Mavromatis v. United Greek Shipowners Corp., 179 F 2d 310 (1st Cir. 1949)	11
McCrea v. United States, 294 U. S. 23	10
Romero v. International Term Co., 358 U. S. 354	6, 7

STATUTES AND TEXTS

46 U. S. C., 688 (Text, App. 2)	2
46 U. S. C. 596 (Pet. App. 26)	2
Gilmore & Black, The Law of Admiralty, pp. 387-88	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 733

SOUTHERN CROSS STEAMSHIP CO., INC.,
Petitioner

versus

GEORGE FIRIPIS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF FIRIPIS IN OPPOSITION

OPINIONS BELOW

The Opinions of the District Court and the Circuit Court of Appeals are unreported at this printing but are printed in the Petitioner's Appendix, the District Court's Opinion at pp. 1a-21a, with the Circuit Court's Opinion at pp. 2-18.

Título XII – Artículo 57 Todo tripulante de nave mercante nacional mayor de cien toneladas tendrá obligación de obtener y portar consigo su LIBRETA DE IDENTIFICACION que le habilitará para trabajar en las naves a bordo de las cuales sirva.

Título XIII – Artículo 65 Las naves mercantes nacionales de tráfico internacional tendrán la obligación de tener a bordo los siguientes documentos además de los ROL DE LA TRIPULACION

Article 57 Every member of the crew of a national merchant vessel of over 100 tons will have the obligation of obtaining and carrying with him his IDENTIFICATION BOOK which will habilitate him to work on the aforesaid national vessels

Article 65 National merchant vessels engaged in foreign traffic will be required to have on board the following documents 1 2 3 Articles of Agreement

CONTRATA DE ENGANCHE

(Articles of Agreement)

ENTRE EL CAPITAN Y TRIPULACION AL SERVICIO DE LA MARINA MERCANTE DE LA REPUBLICA DE HONDURAS

(Between Master and Seamen in the service of the Merchant Marine of the Republic of Honduras)

Oficina del CONSULADO de la Republica de Honduras en el Puerto de NEW YORK

Office of the of the Republic of Honduras at the Port of

a los días del mes de 19

this days of the month of 19

QUEDA CONVENIDO ENTRE EL CAPITAN Y LA TRIPULACION DEL

It is agreed between the Master and the Seamen of the

DEL CUAL ES CAPITAN Y QUE SALE RUMBO HACIA

of which is Master now bound for

O CUALQUIER OTRO PUERTO O LUGAR DEL MUNDO QUE EL CAPITAN ORDENARE, Y DE REGRESO A

or any part of the world as the master may direct, and back to

PUERTO FINAL DE DESCARGA Y POR UN TERMINO QUE NO EXCEDA DE MESES, QUE

final Port of discharge, for a term not exceeding months, that:

1° Adjudicaciones serán hechas anualmente a favor de los [illegible] que hayan servido a bordo [illegible] durante el año inmediato anterior. Cualquier reclamo será admitido [illegible] dentro del término de [illegible] meses después de [illegible] respectivo, y deberá ser acompañado de [illegible] que lo justifiquen.

2. No se harán descuentos a la Tripulación, salvo los [illegible] autorizados por la ley.

3. No se permitirán armas peligrosas o bebidas alcohólicas en poder de la Tripulación.

4. La Tripulación podrá ser transferida a cualquiera otra nave [illegible] por la misma compañía, bajo los mismos convenios de esta contrata.

5. La Tripulación trabajará al día de su llegada a puerto [illegible] un día de descanso.

6. La Tripulación trabajará en la carga y descarga a que [illegible] el Capitán.

7. La tripulación no podrá desembarcar en puertos [illegible] sin permiso del capitán.

8. Cualquier miembro de la tripulación que [illegible] a la hora señalada y día de salida [illegible] servicio de embarque será [illegible] por cada hora o día de demora [illegible].

9. Queda convenido además que en caso de [illegible] por [illegible] enfermedad o muerte que sobrevenga a cualquiera de los [illegible] permanezca en [illegible] inmediatamente [illegible] por los padres de [illegible] Leyes de Honduras aplicables al caso.

10. Queda convenido además que en caso de [illegible] impuestos [illegible] puedan hasta [illegible] que [illegible] igualen a los que [illegible] Honduras [illegible].

11. El [illegible] de la tripulación, [illegible] pérdidas, [illegible] daños, pagará o garantizará [illegible] hasta [illegible] de [illegible].

12. Cualquier disputa que se suscite [illegible] las especificaciones de esta contrata [illegible] de acuerdo con las Leyes de Honduras.

13. Cualquier miembro de la tripulación [illegible] equivalente a los días de salario [illegible] disciplinarias de ley.

14. La Tripulación renuncia a [illegible] ORGANICA DE LA MARINA MERCANTE NACIONAL DE LA REPUBLICA DE HONDURAS

15. Queda convenido además que [illegible] ORGANICA DE LA MARINA MERCANTE NACIONAL de la República de Honduras que [illegible] derechos y compensaciones [illegible] marinero tripulante, [illegible] y [illegible] marineros o acciones que puedan tener [illegible] bajo la [illegible] o muerte del tripulante [illegible] leyes de la República o del país de matrícula [illegible] compañía o indemnizaciones por dichas causas [illegible] parte integrante y fundamental del contrato de enganche de la tripulación.

16. La tripulación igualmente se [illegible] obligante en el cumplimiento [illegible] o de aquel legalmente [illegible] valores y cargo en que [illegible] por la presente contrata en [illegible] oponerse a sus [illegible] transmisión interconectada o [illegible] de cualquiera retaña o [illegible] en [illegible] de la presente [illegible] desempeñada [illegible] remunerado, [illegible] un [illegible] incompetente, [illegible] podrá ser reducido en proporción a su incompetencia [illegible] a [illegible] numérico de la tripulación se considerará agravado por algún [illegible] hará [illegible] notificada la representación consiguiente al Capitán o oficial encargado quien dará [illegible] para remediar el inconveniente.

Article 25 The time of the enrollment, work conditions and the rights and obligations which both contracting parties freely agree to, and which appear in the Articles of Agreement will be absolutely obligatory

Article 57 Every member of the crew of a national merchant vessel of over 100 tons will have the obligation of obtaining and carrying with him his IDENTIFICATION BOOK which will habilitate him to work on the aforesaid national vessels

Article 65 National merchant vessels engaged in foreign traffic will be required to have on board the following documents 1 2 3 Articles of Agreement

1st Adjudications will be made annually to the following persons who [illegible] during the [illegible] immediately [illegible] Any claim [illegible] within the [illegible] months of the voyage [illegible] and shall be accompanied by [illegible] respective Authority of the Republic [illegible]

2. No deductions will be made to seamen before the time [illegible] they have actually earned

3. No dangerous weapons or alcoholic beverages will be allowed in possession of the crew

4. The crew may be transferred to any other vessel operated by the same company under the same conditions of this contract

5. The crew will work on the day of arrival in port of final discharge until 5 o'clock P. M.

6. The crew will work cargo and ballast if required by the Master

7. The crew will not go ashore in any foreign port except by permission of the Master

8. Any member of the crew failing to report for duty at the designated hour or sailing day or who reports [illegible] after discharge, and his place occupied by a substitute [illegible]

9. It is [illegible] agreed, that the rights and obligations arising from [illegible] injury, illness or death other [illegible] of the persons signing this contract which at the contract is in force, and they remain on board [illegible] of the vessel will be exclusively governed by the laws of the Republic of Honduras

10. [illegible] In the event the vessel has not proceed on the agreed voyage due to the unforeseen [illegible] the crew may be discharged upon payment of earned wages plus [illegible] [illegible] or may be transferred, in conditions equal to those [illegible] this contract to any other ship of the same company

11. If any member of the crew engages in smuggling or in any other illicit operations causing losses, [illegible] to the owner or to the ship he will pay the corresponding legal sanctions he will pay to the owner or to the ship the sum of [illegible] damages or expenses.

12. Any dispute arising between the captain, or the owner and members of the crew relative to the [illegible] of this contract will be submitted to and determined by the competent authorities of the Republic of Honduras

13. Any member of the crew found to be absent from the ship without leave, will be subject to a fine of [illegible] pay for each day or part of a day he is absent, and to other legal disciplinary measures.

14. The [illegible] waives the reading [illegible] to the Master, of the articles of the Organic Law of the National Merchant Marine of the Republic of Honduras

15. It is also agreed that there are included in this contract the precepts of Article 55 of the ORGANIC LAW OF THE NATIONAL MERCHANT MARINE of the Republic of Honduras which says: "The rights and compensations granted by this law to seamen who make up the crews of national merchant ships substitute and [illegible] any other rights, previous compensations, [illegible] or actions that could be required from the [illegible] from the ship by reason of the illness, injuries or death of the crew and neither the employer [illegible] may be obliged to pay under other laws of this Republic or of the country [illegible] of any other country, damages, compensations or indemnities for said causes than [illegible] established in this law. The employer will make appear on the crew list the text of this Article as an integral part and condition of the contract of enrollment of the crew."

16. The crew [illegible] agrees to conduct themselves [illegible] an orderly faithful manner and other manner, in the [illegible] of their duties, conformity to the orders, regulations and instructions of the Captain or whoever [illegible] replaces him and of the superior officers in all that which concerns the ship, its stores and cargo, [illegible] on board, in boats or on shore, and in consideration of such services and Captain by these presents, [illegible] the said crew, as wages the amounts appearing opposite their respective names. It is likewise [illegible] to these presents that any embezzlement or wilful or negligent destruction of the ship's cargo or stores [illegible] may be made good to the owner out of the wages of the person [illegible] in such manner [illegible] if as qualified for a duty for which he is found [illegible] incompetent, his wages may be reduced in proportion to his incompetency. It is likewise agreed that if any member of the crew considers himself to be aggrieved for any reason, he shall make the correspondent representations to an orderly manner to the Captain or Officer in charge, who will take the necessary steps to remedy the difficulty.

En testimonio de lo cual, DICHAS PARTES HAN SUBSCRITO SUS NOMBRES AL REVERSO DE LA PRESENTE, EL DIA INDICADO AL LADO OPUESTO DE SUS FIRMAS.

The said parties have subscribed their names on the other sides hereof on the days mentioned against their respective signatures.

	FIRMA Signature	CAPITAN Master
LA CONTRATA EMPIEZA EN Articles opened at	EL	19
LA CONTRATA TERMINA EN Articles terminated at	EL	19

	Greek Kardamyla - Greece							Same address					
PSILTIKLIS. APOSTOLOS	Greek Kardamyla - Greece	47	M	5'-6"	Br.	Fair	Br.	10 Rhiacadou Marmy Piraeus - Greece	Efigenia Tsiltikli Same address				
DIATSIGOS. APOSTOLOS	Greek Lesvos Island - Greece	31	S	5'-8"	Br.	Fair	Br.	38 Pavlou Mela Piraeus - Greece	Evangelos Diatsigos Same address				
HORAITIS. PANAGIOTIS	Greek	33	M	5'-7"	Br.	Fair	Br.	60 Vitaliou Piraeus - Greece	Anastasia Horaitou Same address				
POGONATSIS. NICOLAOS	Greek Kamiros - Greece	30	S	5'-5"	Br.	Fair	Br.	3 Minoos str Piraeus - Greece	Evgenia Pogonatsi Same address				
NATHIOUDIS. DEMETRIOS	Greek Chios - Greece	54	M	5'-5"	Br.	Fair	Gr.	40 Marcou Botsari Piraeus - Greece	Angeliki Nathioudi Same address				
ROUSKETOS. APOSTOLOS	Greek Nelos - Greece	33	M	5'-10"	Br.	Fair	Br.	Thiorygalos Nelos - Greece	Sophia Kousketou Same address				
SARRIS. CONSTANTINOS	Greek Chios - Greece	20	S	5'-8"	Br.	Fair	Br.	Kardamyla Chios - Greece	Despina Karampini Same address				
MITSOUKAS. CONSTANTINOS	Greek Lesvos - Greece	25	S	5'-5"	Br.	Fair	Br.	Vlisha - Lesvos Greece	Vassilios M. Mavras Same address				
EMPRAIOS. CHRISTOS	Greek	37	S	5'-7"	Br.	Fair	Br.	Chrysostomou 27 Athens - Greece	Kyriakoula Iolola Same address				
GOMBOS. POTIOS	Greek Syrni - Greece	38	M	5'-6"	Br.	Fair	Br.	Syrni - Greece	Anna F. Gomtou Same address				
FILIPPIS. GEORGIOS	Greek Chios - Greece	20	S	5'-5"	Br.	Fair	Br.	Kardamyla Chios - Greece	Nicolaos Filippis Same address				
MAKROPOULOS. ALEXANDROS	Greek Athens - Greece	22	S	5'-6"	Br.	Fair	Br.	26 Charilaou Trikoupi Athens - Greece	Kyriakos Makropoulos Same address				
KONSTANDINIDES. NICOLAOS	Greek Rodos - Greece	40	S	5'-6"	Br.	Fair	Br.	48 Kalifona Athens - Greece	Evangelos Heliadis Same address				
KOUKOULOSIANAKIS. COSTAS	Greek	48	M	5'-9"	Br.	Fair	Br.	29 Stefanidou Piraeus - Greece	Maroula Koukoulogianni Same address				
KANDALIS. STRATIOS	Greek Chios - Greece	27	M	5'-9"	Br.	Fair	Blk	Vrondados Chios - Greece	Maria Skandali Same address				
FIGOS. DEMETRIOS	Greek Kalyvia Attikis	20	S	5'-6"	Blk	Fair	Blk	Kalyvia - Attikis Greece	Nicolaos Figos Same address				
OURLAKIS. EMMANUEL	Greek Nelos - Greece	34	M	5'-5"	Br.	Fair	Br.	Thiorahalo Nelos - Greece	Helen Tourlaki Same address				
PAPELAS. DEMETRIOS	Greek Chios - Greece	21	S	5'-8"	Br.	Fair	Br.	Kardamyla Chios - Greece	Agapia Papela Same address				
KALOGERAS. MICHAEL	Greek Chios - Greece	48	M	5'-6"	Br.	Fair	Br.	Amades Chios - Greece	Sophia M. Kalogera Same address				
STRATOS. GEORGIOS	Greek Chios - Greece	18	S	5'-8"	Br.	Fair	Br.	Kardamyla Chios - Greece	Ferronia Nikolaou Same address				
ILIDAS. IOANNIS	Greek Chios - Greece	28	S	5'-6"	Br.	Fair	Br.	Kardamyla Chios - Greece	Costas Ilidas Same address				
KOULIAKOS. COSTAS	Greek Chios - Greece	37	M	5'-8"	Br.	Fair	Br.	Efimiou M. Lepsat. Athens - Greece	Sophia Koulioukou Same address				
KOUTELAS. ANGELIS	Greek Chios - Greece	30	S	5'-8"	Blk	Fair	Blk	Kardamyla - Chios Greece	Irene G. Koutela Same address				
PAPAPLAKAS. EUSTRATIOS	Greek Chios - Greece	22	S	5'-8"	Blk	Fair	Br.	Thalpotaki - Chios Greece	Eudoxos Tsamplakos Same address				
KOUTSOUFOULOS. HELIAS	Greek	20	S	5'-6"	Blk	Fair	Br.	123 Pireaos Piraeus Athens - Greece	Evgilia Stavropoulou Same address				
KOUTSOUFOULOS STEFANOS	Piraeus Greek GREEK	24	Piraeus	5'-7"	Blk	Blk	Blk	Eden avenue 3204 Baltimore Md. 21	Lula Fantapoulou Same address	4	1/4/58 Dismissed	$55.00	

Nr. 1 W 1 H 58

Letter Hospital

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 28th, 1960. The Petition for a Writ of Certiorari was filed on February 16th, 1961. The jurisdiction of this Court is invoked under Title 28, U. S. C. Sec. 1254 (1).

QUESTIONS PRESENTED

I. DOES THE JONES ACT, TITLE 46 U. S. C. 688 et. seq. APPLY WHERE THERE IS AN OVERBEARING AGGREGATE OF UNITED STATES SUBSTANTIAL CONTACTS OF EFFECTIVE OPERATION, MANAGEMENT, CONTROL AND OWNERSHIP OF A FOREIGN FLAG VESSEL AND WHERE FURTHER THERE IS NO CONNECTING LINK OR CONTACT WITH THE FOREIGN COUNTRY OF THE SHIP'S FLAG?

II. SHOULD WAGE PENALTIES UNDER 46 U.S.C. 596 HAVE BEEN ASSESSED WHERE FROM THE DATE OF LIBEL EARNED WAGES WERE DUE AND CLAIMED, THE CLAIMS REPEATEDLY ASSERTED AND JUST AS STUBBORNLY REFUSED BY THE SHIPOWNER UNTIL AFTER FINAL JUDGMENT IN THE DISTRICT COURT?

STATUTES INVOLVED

The Statutes involved are 46 U. S. C., 688 et. seq. (App. 2), known as the Jones Act and Title 46, U.S.C. 596 (Pet. App. 26), known as seaman's double wage penalty statute.

COUNTER STATEMENT OF THE CASE

This counter statement of the case is deemed necessary in correcting certain inaccuracies or omissions in the Statement of the shipowner-Petitioner. Seaman Firipis joined the SS MARGARITIS on April 6, 1957, having signed an employment contract in Piraeus, Greece for voyages to last for one year. Within approximately three weeks of the expiration of his employment contract, the vessel changed Masters at Hamburg and while en route to the United States at sea on March 13th, 1958, Firipis signed new articles with the new Master for an additional term of service. The vessel flew the Honduran flag and the new articles signed at sea with the new Master provided for application of Honduran law to govern rights and liabilities in case of injury. Petitioner Southern Cross Steamship Company, the ship's ostensible corporate owner, was a Liberian Corporation although neither the owners resided in Liberia nor were they Liberian citizens nor was the effective control, management or operation of the vessel had from Liberia. (App. 3-5). Nor did the owners reside nor had this Honduran flag vessel ever been to Honduras and no contact or connection whatsoever was had by the vessel or her owners with Honduras or Liberia. (App. 3-5). All of the effective control, management and operation of both the shipowner petitioner, the owning corporation which resided at 1 Broadway, New York City and the vessel SS MARGARITIS was in New York City and all of the voyages of the vessel prior to the injuries to Firipis with the exception of two were to and from ports of the United States and other ports of the world with the exception of Honduran, Liberian, and Greek ports, there being none to the latter three countries. (App. 3-5). A United States citizen owned twenty (20%)

per cent of the stock of Petitioner and eighty (80%) per cent was owned by Greek citizens, the latter either residing in New York City or making the United States the place of the operational control and management of the SS MARGARITIS. Although Firipis signed his contract of employment in Greece, the articles signed on the ship provided for application of Honduran law. No voyages were ever made to Greece and the only contact was Greek ownership of eighty (80%) per cent of Petitioner's stock. The vessel MARGARITIS unquestionably flew a phony flag. The Findings of Fact of the District Court were: "That the SS MARGARITIS is a 'flag of convenience' cannot be doubted." The Petitioner shipowner neither in the District Court or the Circuit Court of Appeals urged application of the Greek law nor did seaman Firipis. Petitioner urged Honduran law and Firipis urged the Jones Act, 46 U.S.C., Sec. 688 because of the overbearing American contacts and connection coupled with partial American ownership.

Petitioner shipowner states at page 2 that articles were signed at Bremen, Germany on March 13, 1958. They were signed at sea and not in Germany. (D. C. Opinion Pet. App. p. 19a).

Having been unsuccessful in securing the application of Honduran law, for the first time in this Court, Petitioner by inference suggests the application of Greek Law of which it never introduced evidence in either of the Courts below. It is clear that this Court would not for the first time consider such suggestion, Petitioner having failed to prove the Greek law nor relying on such law in either of the lower Courts.

While at sea on March 13, 1958 en route to the United States when new articles were signed, Petitioner ship-

owner owed Firipis over 28 English pounds in earned wages, rendering him a wage statement to that effect. Firipis demanded but never received these earned wages. On reaching Norfolk, Virginia he was injured on April 1, 1958 but was paid only his wages of $53.54 from March 13th to April 2nd, 1958. On April 14th, 1958 Firipis filed his Libel for damages for personal injuries with separate claim for earned wages and penalties due him under 46 U.S.C. 596. The shipowner therefore knew on April 14th, 1958 that Firipis was claiming his earned wages due him and unpaid up to March 13th, 1958 amounting to over 28 English pounds. Petitioner states on page 3 that this was the first time it learned that there were wages due from a "prior voyage." This is incorrect as petitioner's contract of employment for different voyages for one year was not terminated until April 6th, 1958, some five days after he was injured at Norfolk. The number of voyages during this period is unimportant as he had been hired for continuous voyages for an entire year.

Although Firipis continuously demanded his earned wages from April 14th, 1958 through until the final judgment in the District Court on February 22nd, 1960, the shipowner stubbornly refused to pay Firipis and thereafter deposited the earned wages plus penalties in the registry of the District Court in order to avoid running of future penalties during appeal. Firipis has not received his earned wages even as of today.

Petitioner states on page 8 that on August 21st, 1958 at time of taking of Firipis' deposition de bene esse, its "attorneys first learned that libellant claimed he was due wages." This is incorrect as petitioner's attorneys had copy of Firipis' libel on April 14th, 1958 at the time it was filed. The assessment of penalties for failure to pay earned

wages under 46 U.S.C. 596 is within the discretion of the District Court. The Circuit Court of Appeals has upheld the District Court's finding and has decided there was no abuse of discretion.

ARGUMENT

POINT I. THE OVERBEARING AGGREGATE OF THE CONNECTIONS AND CONTACTS WITH THE UNITED STATES COMPELS THE APPLICATION OF THE JONES ACT.

Petitioner states as a reason for granting the Writ that this case is in conflict with the decision of this Court in Lauritzen v. Larsen, 345 U. S. 571 and Romero v. International Term Co., 358 U. S. 354, but we feel that there is no merit in this suggestion as in the Lauritzen decision the vessel flew a bona fide Danish flag and was owned and wholly controlled by Danish citizens, all of whom were sued by a Danish seaman. In Romero the vessel flew a bona fide Spanish flag and was wholly owned and controlled by Spanish citizens, all of whom were sued by a Spanish seaman. Lauritzen and Romero were not flag of convenience cases. In Lauritzen the only United States contact was the signing of articles. In Romero the only United States contact was the occurrence of injuries in American waters. Indeed Lauritzen did not involve a conflict between the laws of the flag and the laws of a country in which there was an overbearing aggregate of substantial connection and contacts of effective operation, management, control and partial ownership, since in Lauritzen the flag and all effective control was Danish. Similarly Romero does not involve a case of conflict between the law of the flag and the law of a country in which there was an overbearing aggregate of substantial connection

and contacts of effective operation, management, control and partial ownership, since in Romero the flag and all effective control was Spanish. This Court in Lauritzen excluded the phony flag ships from the application of the ensign stating at 354 U. S. 571, 587:

> "But it is common knowledge that in recent years the practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our Courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them."

The Lauritzen decision only sets forth the pilot rules for the application of conflicting considerations leading to application of law for bona fide flag vessels and the holding was restricted merely to deciding that the Jones Act, 46 U. S. C. 688, as a matter of statutory construction did not cover a plaintiff in Larsen's situation. Gilmore and Black, The Law of Admiralty, 387-88. Lauritzen, in deciding that the flag is the important element to consider clearly does not apply to a flag of convenience case. An ensign which ceases to be bona fide also loses its respect and importance.

Therefore in following the principles of the Lauritzen decision, the lower Courts must look to other considerations to determine the choice of law and these considerations are most frequently the overbearing aggregate of substantial connection and contacts of effective operation, management, control and ownership of a vessel. Bartholomew v. Universe Tankships, Inc., 263 F 2d 437 (2nd Cir. 1959) cert. den. 359 U. S. 1000; Gerradin v. United Fruit Co., 60 F 2d 927, (2nd Cir. 1932) cert. den. 287 U. S.

642; Carroll v. United States, 133 F 2d 690 (2nd Cir. 1943).

The entire thrust of the petitioner's argument here as reason for granting the Writ is that 80% of the corporation shipowner was owned by Greek citizens and the Jones Act should not have been applied. But ownership is only one factor out of many which should be considered under the Lauritzen decision. Petitioner's argument implies that Greek law should have been applied. But the petitioner never urged such a law below and cannot urge it before this Court. Lauritzen v. Larsen, 354 U. S. 571, 584.

We believe that the Second Circuit in Bartholomew v. Universe Tankships, Inc., 263 F 2d 427 (2nd Cir. 1959) cert. den. 359 U. S. 1000, expressly following the mandate of Lauritzen and being governed by the standards set forth therein, has correctly evaluated the standards of choice of law in these cases stating at page 440 of 263 F 2d:

> "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. Thus we conclude that the test is that 'substantial' contacts are necessary. And while as indicated supra one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more to say that in such a case the contact is so obviously substantial as to render unnecessary a further probing into the facts.
>
> * * * * * *
>
> "Accordingly, the decisional process of arriving at a conclusion on the subject of the application of the Jones Act involves the ascertainment of the facts or groups of facts which constitute contacts between the transaction involved in the case and the United States, and then deciding whether or not they are

substantial. Thus each factor is to be 'weighted' and 'evaluated' only to the end that, after each factor has been given consideration, a rational and satisfactory conclusion may be arrived at on the question of whether all the factors present add up to the necessary substantiality. Moreover, each factor, or contact, or group of facts must be tested in the light of the underlying objective, which is to effectuate the liberal purposes of the Jones Act. We shall now proceed to apply these principles to the case before us.'

Both the District Court and Circuit Court of Appeals in this case followed and relied upon Bartholomew in deciding this case. In view of this Court denying certiorari in Bartholomew we are confident that no conflict either in principle or decision exists between this case and the Lauritzen decision of this Court as construed and followed in the Second Circuit decision in Bartholomew.

Here the aggregate of the substantial connection and contacts of the petitioner and the SS MARGARITIS with the United States are:

(1) Petitioner has its residence and office at No. 1 Broadway, New York City, New York.

(2) Petitioner actively directs, operates, manages and controls the SS MARGARITIS from its office in New York City;

(3) Petitioner has no connection or contact whatsoever with Honduras nor has its vessel ever been there nor were any Honduran seamen aboard;

(4) Petitioner although alleging to be a Liberian corporation has no officers or employees in Liberia nor has the SS MARGARITIS ever been to Liberia nor were any Liberian seamen aboard;

(5) Petitioner neither had offices nor officers nor was the SS MARGARITIS controlled or operated from Greece nor did it fly the Greek flag;

(6) Seaman Firipis validated articles in New York City and was injured at Norfolk, Virginia;

(7) Petitioner violated the United States Wage Statutes (46 U. S. C. 596) at Norfolk, Virginia;

(8) All but two of the voyages of the SS MARGARITIS were made between the United States and other ports of the world excepting Honduras, Liberia and Greece;

(9) Twenty (20%) per cent of petitioner's stock was owned by a United States citizen.

Indeed as in Lauritzen, 345 U. S. 571 (1953) and Bartholomew v. Universe Tankships, Inc., 263 F. 2d 437, cert. den. 359 U. S. 1000, the decision in this case depended upon the particular facts and the presence of these factors shows the correctness of the decision below. Petitioner's contentions here are plainly insubstantial and this Court has previously declined to consider similar contentions made in Bartholomew by denying a Writ in that case.

POINT II. UNDISPUTED WAGES WERE DUE FIRIPIS FOR WHICH DEMANDS WERE MADE AND THE COURTS BELOW IN THEIR DISCRETION WERE JUSTIFIED IN ASSESSING PENALTIES AGAINST PETITIONER.

Petitioner states as a reason for granting the Writ that the decision in this case conflicts with McCrea v. United States, 294 U. S. 23. Petitioner fails to point out to this Court that the seaman in McCrea forfeited and ev-

cused the Master's omission to pay his earned wages by not returning for payment after he had demanded his wages. This Court expressly held that there was "an excusable failure to pay within the prescribed period" on the part of the Master precluding assessment of penalties. But here Firipis demanded his wages on April 14th, 1958 after being injured on April 1st, 1958 and the stubborn shipowner refused to pay acknowledged earned wages until after final decree on February 22nd, 1960. On this issue there is no similarity whatsoever between this case and the decision of the Court in McCrea. But the shipowner here argues that McCrea holds there is no liability for wage penalties for any previous voyages. We suggest that petitioner's interpretation of the McCrea decision is not that far reaching. This contention was made in Korthinos v. Niarchos, 175 F 2d 730 (4th Cir. 1949) cert. den. 338 U. S. 894. The Court of Appeals below in that decision, 175 F. 2d 730, 733 states:

> "We see no reason why recovery of wages should be limited to the last voyage . . ." under 49 U: S. C. Sec. 596.

Petitioner also fails to point out to this Court that seaman Firipis here was employed under a one-year contract of employment for continuous voyages which was not terminated until April 6th, 1958, five days after his injuries and separation from the vessel. In Mavromatis v. United Greek Shipowners Corp., 179 F 2d 310 (1st Cir. 1949). Greek seamen were continuously employed on a Greek vessel for three voyages. The Master only wanted to pay wages for the third voyage upon the termination of contract of employment at end of the third voyage. The Court assessed penalties for failing to pay wages for the two previous voyages

We feel that in view of the wide discretion given lower Courts in assessing seamen's wage penalties, in the absence of clear abuse of discretion, this Court would not deem a review warranted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully Submitted,

SIDNEY H. KELSEY,
Proctor for Respondent Seaman Firipis

SIDNEY H. KELSEY
1408 Maritime Tower
Norfolk 10, Virginia
Attorney for Respondent